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EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/649,303
Filing Date: August 27, 2003
Appellant(s): YANG-HUFFMAN ET AL.

Hope Shimabuku
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/17/2008 appealing from the Office action mailed 1/2/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2004/0008727	SEE et al	1-2004
7,302,478	CONRAD	11-2007
6,343,320	FAIRCHILD et al	1-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-30 are pending.

Response to Arguments

Applicant's arguments filed 10/1/2007 have been fully considered but they are not persuasive.

> Regarding Claim 1, Applicant argues that the cited prior art of record, *See et al* (US 2004/0008727), fails to teach "at least one collector operable to…poll a subset of network nodes requiring monitoring according to the collection configuration information".

Examiner respectfully disagrees. *See et al* clearly discloses one or more network management systems, NMS, that monitors and polls the managed network devices under its management (*pages 2-3 paragraphs 0025-0027*); meaning that in a network, each NMS manages only a subset of network devices and therefore only monitors and polls the network devices it is responsible for, which is a subset of all the devices in the network. Furthermore, each NMS implements monitoring and polling by collecting local resource property data from each managed network device, wherein the local resource property may comprise internal resource properties and connectivity properties such as: hardware configurations, software installations, device name, type, location, etc (*pages 1-2 paragraphs 0011-0012*). Applicant's arguments are therefore unpersuasive and the rejection under the prior art is maintained.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 24 is rejected under 35 U.S.C. 101 because the claim fails to produce a tangible result and only recites the intended use in the claim language. Claim 24, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential step, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted step is: linking the criteria and/or data collected to the filtering step. As is the two steps of the claim are disjoint and do not relate to one another.

Claim 24 provides for the use of collecting data from a plurality of network nodes to target a subset of the plurality of network nodes for fault monitoring, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process

applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-9 and 20-23 are rejected under 35 U.S.C. 102(e) as being anticipated by *See et al* (US 2004/0008727).

a. Per claim 20, *See et al* teach the method for monitoring a network of a plurality of network nodes, comprising:

- means for receiving network topology information (*page 5 paragraph 0053*);
- means for receiving a definition of a subset of network nodes from which to collect data and a definition of the type of data to collect (*pages 2-3 paragraphs 0024-0026*);
- means for generating collection configuration information in response to the network topology information, definition of the subset of network nodes and definition of the type of data (*pages 1-2 paragraphs 0010-0012, page 3 paragraphs 0027-0028—provision for collecting information of network resources/nodes relating different properties of the resources/nodes*); and

- means for polling the subset of network nodes to collect data according to the collection configuration information (*pages 2-3 paragraphs 0025-0027—provision for polling and specifying the type of information collection from the resources/nodes managed by network management system*).

b. Claim 1 contains limitations that are substantially similar to claim 20 and are therefore rejected under the same basis.

c. Per claim 2, *See et al* teach the system, as set forth in claim 1, wherein the at least one collection policy defines the subset of network nodes requiring monitoring (*Abstract, pages 1-2 paragraphs 0010-0016, page 3 paragraph 0027*).

d. Per claim 3, *See et al* teach the system, as set forth in claim 1, wherein the at least one collection policy defines the Internet Protocol of the subset of network nodes requiring monitoring (*page 3 paragraphs 0028-0029*).

e. Per claim 21, *See et al* teaches the system, as set forth in claim 20, wherein means for receiving the network topology information comprises receiving identities of the subset of network nodes requiring monitoring (*page 5 paragraph 0053*).

f. Per claim 4, *See et al* teach the system, as set forth in claim 1, wherein the at least one collection policy defines a device type of the subset of network nodes requiring monitoring (*page 1 paragraph 0011, page 3 paragraph 0028*).

g. Claim 22 are substantially similar to claim 4 and is therefore rejected under the same basis.

h. Per claim 5, *See et al* teach the system, as set forth in claim 1, wherein the policy server is further operable to generate collection configuration information based on at least one collection instruction, the collection instruction defines what data is to be collected from the subset of network nodes requiring monitoring (*page 3 paragraphs 0031-0034*).

i. Claim 23 is substantially similar to claim 5 and is therefore rejected under the same basis.

j. Per claim 6, *See et al* teach the system, as set forth in claim 1, wherein the policy server is further operable to generate collection configuration information based on at least one collection instruction, the collection instruction defines how data is to be collected from the subset of network nodes requiring monitoring (*page 2 paragraph 0012, page 3 paragraphs 0026-0027 and 0029-0032*).

k. Per claim 7, *See et al* teach the system, as set forth in claim 1, wherein the policy server is further operable to generate collection configuration information based on at least one collection instruction, the collection instruction defines the frequency to collect data from the subset of network nodes requiring monitoring (*page 2 paragraph 0012, page 3 paragraph 0031*).

l. Per claim 8, *See et al* teach the system, as set forth in claim 1, wherein the policy server is further operable to generate collection configuration information based on at lease one collection instruction, the collection instruction defines when to collect data from the subset of network nodes requiring monitoring (*page 2 paragraph 0012, page 3 paragraph 0031, page 4 paragraph 0040*).

m. Per claim 9, *See et al* teach the system, as set forth in claim 1, wherein the policy server is further operable to generate collection configuration information based on at least one collection instruction, the collection instruction defines how to store data collected from the subset of network nodes requiring monitoring (*page 2 paragraph 0014, page 3 paragraph 0030, page 4 paragraph 0044*).

Claims 10, 11 and 15-19 are rejected under 35 U.S.C. 102(a) as being anticipated by *Conrad* (US 7,302,478).

a. Per claim 10, *Conrad* teaches the method for monitoring a network of a plurality of network nodes, comprising:

- receiving network topology information indicating a list of network nodes to monitor (*col.5 line 55-col.6 line 7—provision for list of remote devices to be polled*);
- receiving a definition of a subset of the list of network nodes from which to collect data and a definition of the type of data to collect (*col.5 line 55-col.6 line 7, col.6 lines 49-59*);
- generating collection configuration information in response to the network topology information, definition of the subset of network nodes and definition of the type of data (*col.6 lines 4-65*); and
- collecting data from the subset of network nodes according to the collection configuration information (*col.6 lines 4-65, col.7 lines 7-43*).

b. Per claim 11, *Conrad* teaches the method, as set forth in claim 10, wherein receiving the network topology information comprises receiving identities of the subset of network nodes requiring monitoring (*col.7 lines 31-43*).

c. Per claim 15, *Conrad* teaches the method, as set forth in claim 10, wherein receiving a definition of a subset of network nodes from which to collect data comprises receiving a predetermined criteria to define the subset of network nodes (*col.7 lines 7-17*).

d. Per claim 16, *Conrad* teaches the method, as set forth in claim 10, wherein receiving a definition of the type of data to collect comprises receiving an identification of a data type to collect from the subset of network nodes requiring monitoring (*col.7 lines 7-17*).

e. Per claim 17, *Conrad* teaches the method, as set forth in claim 10, wherein receiving a definition of the type of data to collect comprises receiving a definition of a timing

related to the collection of the data from the subset of network nodes requiring monitoring (*col.6 line 60-col.7 line 17*).

f. Per claim 18, *Conrad* teaches the method, as set forth in claim 10, wherein receiving a definition of the type of data to collect comprises receiving a definition of how to store data collected from the subset of network nodes requiring monitoring (*col.6 lines 4-14, col.7 lines 22-30*).

g. Per claim 19, *Conrad* teaches the method, as set forth in claim 10, further comprising providing the generated collection configuration information to at least one collector operable to collect the data from the subset of network nodes requiring monitoring (*col.6 lines 4-19*).

Claims 24 - 30 are rejected under 35 U.S.C. 102(b) as being anticipated by *Fairchild et al* (US 6,343,320).

a. Per claim 24, *Fairchild et al* teach a method for network fault monitoring, comprising:

- accessing criteria for collecting data from a plurality of network nodes (*col.10 lines 3-40*);
- filtering the plurality of network nodes to a target subset of the plurality of network nodes for fault monitoring (*col.7 lines 5-60, col.11 lines 31-38; provision for hardware fault detection*).

b. Per claim 25, *Fairchild et al* teach the method of Claim 24, further comprising receiving a collection policy indicating criteria for selecting the subset of network nodes (*col.7 lines 20-40, col.11 lines 31-40*).

c. Per claim 26, *Fairchild et al* teach the method of Claim 24, further comprising receiving a collection policy indicating criteria for selecting the subset of network nodes, the

criteria identifying at least one of internet protocol addresses, device types, database values, and management information database object values of the network nodes (*col.10 lines 3-40*).

d. Per claim 27, *Fairchild et al* teach the method of Claim 24, further comprising identifying the subset of network nodes using node status information indicating the operational status of each node in the plurality of network nodes (*col.7 lines 20-40, col.11 lines 31-40*).

e. Per claim 28, *Fairchild et al* teach the method of Claim 24, further comprising filtering the plurality of network nodes using data provided by a collection policy and a network topology source (*col.7 lines 20-40, col.11 lines 31-40*).

f. Per claim 29, *Fairchild et al* teach the method of Claim 24, further comprising forming the subset of network nodes comprising deficiently operating nodes (*col.7 lines 20-40, col.11 lines 31-40*).

g. Per claim 30, *Fairchild et al* teach the method of Claim 24, further comprising providing, to at least one collector, updated criteria for identifying the subset of network nodes to target for fault monitoring (*col.7 lines 5-60, col.11 lines 31-38*).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 12 - 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Conrad* (US 7,302,478) in view of *Fairchild et al* (US 6,343,320).

a. Per claim 12, *Conrad* teaches the method as set forth in claim 10, yet fails to explicitly teach wherein receiving the network topology information comprises receiving identities of active network nodes existing in the network. However, *Fairchild et al* teach receiving and monitoring active nodes in the network (*col.1 lines 24-27*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Conrad* with *Fairchild et al* for the purpose of maintaining the status data of the networked nodes to determined which nodes are active/operational or non-operational in the network.

b. Per claim 13, *Conrad* teaches the method, as set forth in claim 10, yet fails to further teach wherein receiving a definition of a subset of network nodes from which to collect data comprises receiving a range of Internet Protocol addresses of the subset of network node. However *Fairchild et al* teach defining a monitored and managed subset of network nodes by specifying a range of IP address for the nodes (*col.1 lines 23-27, col.10 lines 3-40, col.11 lines 3-30, col.10 lines 3-13*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Conrad* with *Fairchild et al* for the purpose of monitoring a specific range of networked nodes with particular IP addresses because this allows for a specific section of a network to be monitored for analysis.

c. Per claim 14, *Conrad* teaches the method, as set forth in claim 10, yet fails to explicitly teach wherein receiving a definition of a subset of network nodes from which to collect data comprises receiving a device type of the subset of network nodes. However, *Fairchild et al* teaches specifying device type of the subset of network nodes for monitoring (*col.6 lines 12-45,*

col.7 lines 64-65, col.10 lines 14-40). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Conrad* with *Fairchild et al* for the purpose of specifying the type of network devices to monitor because this allows only particular types of devices with certain characteristics to be monitored for analysis.

(10) Response to Argument

A. Appellant argues, with respect to claims 1-9, that the *See et al* reference fails to teach "at least one collector operable to…poll a subset of network nodes requiring monitoring according to the collection configuration information".

Examiner respectfully disagrees. *See et al* clearly disclose one or more network management systems, NMS, that controls the monitoring and polling of the managed network devices under its management (*pages 2-3 paragraphs 0025-0027*); meaning that in a network, each NMS manages only a subset of network devices and therefore only monitors and polls the network devices it is responsible for, which is a subset of all the devices in the network. Furthermore, each NMS implements monitoring and polling by collecting local resource property data from each managed network device, wherein the local resource property may comprise internal resource properties and connectivity properties such as: hardware configurations, software installations, device name, type, location, etc (*pages 1-2 paragraphs 0011-0012*). Appellant's assertion that *See et al* teaches away polling network devices is erroneous. *See et al* implements methods to minimize the polling done by the network management system (*page 1 paragraph 0002*), wherein the monitoring steps performed by the network management system comprise periodically polling the property values of local resources via the local resource manager or LRM (*page 2 paragraphs 0012-0016, page 4 paragraph*

0043). From *See et al's* disclosure it is clear that the network management system or NMS functions as the policy server described in claim 1, which under its management requires specific information about the managed network devices (*page 3 paragraph 0026*). The "at least one collector" described in claim 1 is realized by *See et al's* local resource manager(s) or LMR which collect information from the monitored managed network devices and reports this information the central data store, CDS (*page 3 paragraphs 0027-0031*). Appellant's arguments are therefore unpersuasive.

B. Appellant argues, with respect to claims 20-23, that the *See et al* reference fails to teach "means for generating collection configuration information…and means for polling the subset of network nodes to collect data".

Examiner respectfully disagrees. As explained above, *See et al* clearly disclose one or more network management systems, NMS, that controls the monitoring and polling of the managed network devices under its management (*pages 2-3 paragraphs 0025-0027*), by using the LRM to polling the subset managed network devices managed by the NMS (*page 4 paragraphs 0039-0044*). Furthermore, the collection configuration information is generated by the policy manager and configuration manager of the NMS (*page 3 paragraphs 0032-0034, pages 4-5 paragraphs 0045-0047*). Appellant's arguments are therefore unpersuasive.

C. Appellant argues, with respect to claims 10, 11 and 15-19, that the *Conrad* reference fails to teach "a subset of the list of network nodes from which to collect data…and generating collection configuration information".

Examiner respectfully disagrees. *Conrad* clearly teaches that the user selects monitored remote nodes from which data should be collected, which is obviously a selected subset of network nodes (*col.4 lines 8-19*). The user-selected devices are then subject to polling

based on a schedule and periodic polling interval (*col.5 line 55-col.6 line 7*). Furthermore, the self-monitoring network management system generates the collection configuration information to assess in the maintenance of the network, which pertains to the network topology, wherein the user is able to specify the collection configuration information and collection schedule (*Abstract, col.3 lines 4-15, col.4 line 64-col.5 line 54, col.6 lines 49-65*). Appellant's arguments are therefore unpersuasive.

D. Appellant argues, with respect to claims 24-30, that the *Fairchild et al* reference fails to teach "filtering the plurality of network nodes to determine a subset of the plurality of network nodes for fault monitoring based on the collection policy".

Examiner respectfully disagrees. *Fairchild et al* clearly teach grouping node participating devices based on specific criteria (*col.10 lines 3-10*), wherein the nodes are organized into according to the particular criteria of the subnet to which the nodes belong (*col.11 lines 3-10*). Monitoring and data retrieval are then executed within the subnet groups for obtaining status information related to the nodes (*col.11 lines 30-59*, *col.31 lines 52-64*, *col.33 lines 7-18*). The information collected by the management server from the nodes pertains to hardware fault detection of the nodes, software configuration and updates, etc (*col.7 lines 20-63*). Appellant's arguments are therefore unpersuasive.

E. Appellant argues, with respect to claims 12-14, that the rejection made over *Conrad* in view of *Fairchild et al* fails to teach all of the limitations of claims 12-14.

Examiner respectfully disagrees. Appellant fails to clearly articulate which limitations are not taught by the cited prior art, thus Examiner maintains the rejections made in light of the rejection and response made for the parent claim 10 (see item C above). As explained

above, the *Conrad* and *Fairchild et al* references clearly teach methods for monitoring and collecting data from a subset of network nodes. Appellant's arguments are unpersuasive.

For the above reasons, it is believed that the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted,

/Kristie D. Shingles/
Examiner, Art Unit 2441
/William C. Vaughn, Jr./

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